



POLICE DEPARTMENT

July 9, 2015

MEMORANDUM FOR: Police Commissioner

Re: Captain James Crescitelli
Tax Registry No. 906032
Warrant Section
Disciplinary Case No. 2013-10417

The above-named members of the Department appeared before me on June 4, 2015 charged with the following:

1. Said Captain James Crescitelli, while assigned to the Warrant Section, on or about March 20, 2012, at about 0820 hours, while on duty, within the confines of the 75th Precinct, wrongfully discharged his service firearm two (2) times at the dark tinted passenger-side window of a moving vehicle outside Department Guidelines.

Interim Order #6, Series 2012, issued 2/10/12 - REVISION TO PATROL GUIDE 203-12, "DEADLY PHYSICAL FORCE"

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Louis LaPietra, Esq. and Gillian McGovey, Esq.

Respondent through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

ANALYSIS

After pleading Guilty, Respondent testified as to the events leading up to his discharge of a firearm on March 20, 2012. On that day, Respondent was working as a Captain and Commanding Officer of Brooklyn North Warrants Squad. At about 8:30 AM, Respondent was in plain clothes driving an unmarked Department vehicle. He was headed into Queens for coffee when he heard officers from the 75 Precinct on the radio yelling about a pursuit of a vehicle heading westbound on Liberty Avenue. Respondent saw a Mercedes about four blocks away heading in his direction, driving erratically, with an RMP in pursuit. Respondent stopped his vehicle and put on his turret lights. Respondent's vehicle was in the eastbound lane of a two way street. There was one lane of traffic going each direction and there were cars parked along the sides of both lanes. The driver of the Mercedes put the car into reverse and hit the 75 Precinct RMP.

Respondent had his gun drawn and his shield out. He started yelling commands to the driver to get out of the car and to show his hands. The driver did stop and put his hands up. The Respondent then heard the Mercedes engine revving. The driver's hands then dropped down and the Mercedes started to move towards Respondent at full acceleration. Respondent started to retreat but he "can only retreat so much because there's a whole row of parked cars behind me." (Tr. p. 24) The Mercedes hit the Respondent and Respondent fired two shots. Respondent was thrown to the ground. He sustained three herniated discs in his back, nerve damage in his left leg and bruising and contusions. Respondent testified that it is his belief that if he had not discharged his firearm, he would not be here today. (Tr. p. 27).

The driver of the Mercedes was apprehended and was convicted after a jury trial of Assault in the Second Degree. He is described as a career criminal with 16 arrests prior to this incident. (Dep't. X 2, p. 5). The Assistant District Attorney handling the case wrote a letter to the NYPD asking that Respondent be commended for "not only risking his life to apprehend a dangerous felon during a high speed chase but in aiding the District Attorney's Office of Kings County in the successful prosecution of a difficult case..." (Resp. X C).

Respondent's position in requesting mitigation of the penalty in this case is that while indeed he technically violated the Patrol Guide, he had to make a very difficult decision in seconds and that he believed if he had not fired his gun when he did, he would have been killed. He argues that there was nothing else he could have done in the situation because he would have had to jump up on the hood of a parked car to remove himself from the path of the Mercedes. Other factors requested to be considered in mitigation are that 1) he has plead guilty and acknowledged responsibility; 2) his response was very measured in that he only fired two rounds and did not empty his clip into the car; and 3) he did not receive any specific training in how to deal with a situation such as the one he was in.

The Department's position is that Respondent had an opportunity to remove himself from the situation and enter a zone of safety. They further cite the fact that the Firearms Discharge Review Board found that Respondent violated the Patrol Guide. The Firearms Review Board noted that ballistic evidence indicated that the rounds were fired by Respondent as the car had already just passed him. (Dep't X. 2, p. 6).

The Department has requested the forfeiture of 15 vacation days as the appropriate penalty in this case.

The Respondent is asking for a penalty of instructions.

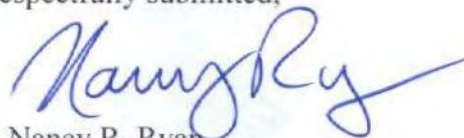
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on February 28, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to discharging his firearm at a moving vehicle. In *Disciplinary Case No. 2011-4135* (Jul. 23, 2013), a 23-year detective forfeited a penalty of 30 vacation days for identical misconduct. This tribunal empathized with the detective in that case, calling his circumstances "unique and extraordinary," and finding that he reasonably believed that shooting the car was necessary to prevent his partner from suffering serious physical injury. In *Disciplinary Case No. 75687/00* (Jan. 13, 2003), a ten-year police officer forfeited 30 vacation days and was placed on one year dismissal probation for discharging his firearm at a moving vehicle and using his RMP as a roadblock during a pursuit.

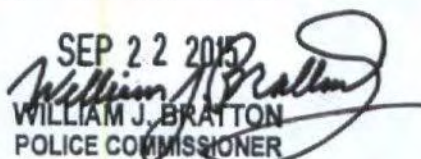
In light of these decisions, the Department's penalty recommendation of 15 vacation days for the current case has clearly already incorporated the above-mentioned mitigating factors and is reasonable. Accordingly, it is recommended that Respondent forfeit 15 vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner – Trials

APPROVED

SEP 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
CAPTAIN JAMES CRESCITELLI
TAX REGISTRY NO. 906032
DISCIPLINARY CASE NO. 2013-10417

Respondent received an overall rating of 4.5 "Extremely Competent/Competent" on his last three annual performance evaluations. He has been awarded 13 medals for Excellent Police Duty and four for Meritorious Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner – Trials